IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

CRP.No. 2781 of 2001

(E.P.No.155 of 1995 in LAR.155/1995 of SUB COURT, CHERTHALA)

REVN. PETITIONER/JUDGMENT DEBTOR:

STATE OF KERALA

BY GOVERNMENT PLEADER ADV. SHRI THOMAS JOHN AMBOOKKAN

RESPONDENT/DECREE HOLDER:

VICAR, ST. RAPHEL CHURCH,
EZHUPUNNA.

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/11/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP.No. 2781 of 2001

ORDER ON C.M.P.NO. 5892 OF 2001 IN C.R.P.NO. 2781 OF 2001

DISMISSED.

27.11.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 2781 OF 2001

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Dated this the 27th November , 2007

O R D E R

The State Challenges the order dated 28th March 2001 in E.P.No.155 of 1995 in L.A.R. 110 of 1989 on the file of the court of the Subordinate Judge, Cherthala . By the order impugned, the executing court accepted the statement filed by the decree holder as to the amount due to the decree holder.

2. The contention raised by the State as revealed from ground No. 2 is as follows:

> *"In the Execution Proceedings, the respondent herein claimed interest on solatium. It is not allowable as per the decision of the Supreme Court as well as the decision of this Court reported in 1996(1) KLT 452 (Supreme Court)96 (2) Supreme Court SCC 71 & 98 (1) KLT 812. Without considering the above binding decisions the court below illegally accepted the statement of the decree holder claiming interest on solatium."*

3. The question whether interest on solatium is payable is well settled by the decision of the Supreme Court in ***Sunder vs. Union of India*** **[2001 (3) KLT 489 (SC)],** wherein it was held that a person entitled to the award of compensation is also entitled to get interest on the aggregate amount of compensation including solatium. In ***Gurpreet Singh vs. Union of India*** **([2006] 8 S.C.C. 457)**, the Supreme Court, while dealing with the question

whether interest on solatium could be claimed in execution proceedings where the decree does not provide for the same , held in paragraph 54 of the judgment as follows:

> *"One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in courts all over the country, we permitted the counsel to address us on that question. That question is whether in the light of the decision in Sunder, the awardee/decree-holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of* ***Sunder*** *and say that the compensation awarded includes solatium and in*

such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in ***Sunder*** *(19.09.2001) and not for any prior period. We also clarify that this will not entail any reappropriation or fresh appropriation by the decree holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question."*

4. In view of the decision in ***Gurpreet Singh vs. Union of India*** and also the decision in ***Sunder vs. Union of India,*** it cannot be said that the order passed by the executing court is illegal or improper. There is no ground for interference in this revision.

Accordingly, the Civil Revision Petition is dismissed. C.M.P.No. 5892 of 2002 is also dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 2781 OF 2001

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Dated this the 27th November, 2007

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